

REMARKS

Claims 14-33 are presently in the application. Claims 1-13 have been canceled.

Claims 14-33 have been rejected under 35 U.S.C. 103(a) as unpatentable over Weigl (DE 199 35 920) in view of Ripper et al (US 2004/0115110). Reconsideration of the rejection is requested.

Ripper et al (US 2004/0115110) is not a proper reference, because it was published after applicants' October 27, 2003 U.S. filing date and does not have a 35 U.S.C. 102(e) date.

MPEP 706.02(f)(1) sets forth examination guidelines for applying references under 35 U.S.C. 102(e) and states, in part, as follows:

I. DETERMINE THE APPROPRIATE 35 U.S.C. 102(e) DATE FOR EACH POTENTIAL REFERENCE BY FOLLOWING THE GUIDELINES, EXAMPLES, AND FLOW CHARTS SET FORTH BELOW:

(A) The potential reference must be a U.S. patent, a U.S. application publication (35 U.S.C. 122(b)) or a WIPO publication of an international application under PCT Article 21(2) in order to apply the reference under 35 U.S.C. 102(e).

(B) Determine if the potential reference resulted from, or claimed the benefit of, an international application. If the reference does, go to step (C) below. The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph. See MPEP § 2136.02. (C) If the potential reference resulted from, or claimed the benefit of, an international application, the following must be determined:

(C) If the potential reference resulted from, or claimed the benefit of, an international application, the following must be determined:

- (1) If the international application meets the following three conditions:
 - (a) an international filing date on or after November 29, 2000;
 - (b) designated the United States; and

(c) published under PCT Article 21(2) in English, then the international filing date is a U.S. filing date for prior art purposes under 35 U.S.C. 102(e). If such an international application properly claims benefit to an earlier-filed U.S. or international application, or to an earlier-filed U.S. provisional application, apply the reference under 35 U.S.C. 102(e) as of the earlier filing date, assuming all the conditions of 35 U.S.C. 102(e), 119(e), 120, or 365(c) are met. The subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e). Note, where the earlier application is an international application, the earlier international application must satisfy the same three conditions (i.e., filed on or after November 29, 2000, designated the U.S., and had been published in English under PCT Article 21(2)) for the earlier international filing date to be a U.S. filing date for prior art purposes under 35 U.S.C. 102(e).

*(2) If the international application was filed on or after November 29, 2000, but did **not** designate the United States or was **not** published in English under PCT Article 21(2), do **not** treat the international filing date as a U.S. filing date for prior art purposes. In this situation, do **not** apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. 102(a) or (b) as of its publication date, or 35 U.S.C. 102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable).*

Ripper et al (US 2004/0115110) is a U.S. application publication. The Ripper et al U.S. published application is based on an International application filed after November 29, 2000, and the international application was **not** published in the English language. Therefore, the Ripper et al published application does **not** have a 102(e) date and does **not** qualify as prior art under 35 USC 102(e). See the italicized paragraph, above. Accordingly, the 35 USC 102(e) rejection is improper and should be withdrawn.

Further, Ripper et al is not a reference under 35 U.S.C. 102(a), because the publication date of the reference is June 17, 2004, which is after applicants' U.S. filing date

of October 27, 2003. The examiner is reminded that the applicants' international filing date is also the applicants' U.S. filing date. See, MPEP 1893.03(b).

The International application upon which Ripper et al (US 2004/0115110) is based was published as International Publication No. WO 2003/039718 on May 15, 2003, and is available as a reference under 35 U.S.C. 102(a). To overcome this reference, enclosed is an English translation of applicants' German priority application No. 10251588.3, which was filed on June 11, 2002, and a statement that the translation of the certified copy is accurate. Accordingly, applicants' are entitled to an effective filing date of June 11, 2002, which precedes the publication date of International Publication No. WO 2003/039718.

In view of the above, withdrawal of the rejection is requested.

Furthermore, Weigl teaches the use of a heating element 12 for the purpose of preventing freezing of the reducing agent in the tank 10, not for the purpose of stimulating a partial chemical conversion of the auxiliary agent.

Ripper et al describes a conversion of urea into ammonia in order to inject a gaseous component into the exhaust gas. In Ripper, the lowering of the freezing point in the liquid tank is done by a different substance, namely a substance for transferring heat and for lowering the freezing point. The substance for transferring heat and for lowering the freezing point is selected, for example, from a group including diethylene glycol diethyl ether, diethylene glycol dibutyl ether, diethylene triamine, diethyl glycol and glycerin.

Thus, the combination of the teachings of Weigl and Ripper et would have resulted in the introduction of a substance for transferring heat and for lowering the freezing point into

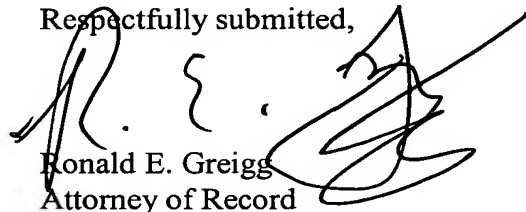
Appl. No. 10/532,625
Amdt. dated Jan. 22, 2008
Reply to Office action of Aug. 20, 2007

the tank 10 of Weigl. If anything, the Ripper reference actually teaches away from the invention claimed by the applicants.

Please charge the fee for any necessary extension of time to deposit account No. 07-2100.

Entry of the amendment and allowance of the application are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. E. Greigg', is written over the typed name and title.

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Enclosure: Translation of applicants' priority document

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